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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights, including ways and means to promote the human rights of migrants

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 70/147 on the protection of migrants. In the resolution, the Assembly requested the Secretary-General to submit to the Assembly and the Human Rights Council at their seventy-first and thirty-third sessions, respectively, a comprehensive report entitled "Human rights of migrants", covering all aspects of the implementation of the resolution.

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I. Introduction

1. In resolution 70/147 on the protection of migrants, which was adopted by the General Assembly on 17 December 2015, the Assembly called upon States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants and avoiding approaches that might aggravate their vulnerability.

2. In paragraph 17 of the aforementioned resolution, the General Assembly requested the Secretary-General to submit to the Assembly and the Human Rights Council at their seventy-first and thirty-third sessions, respectively, a comprehensive report entitled "Human rights of migrants", covering all aspects of the implementation of the resolution.

3. The present report contains a summary of the written submissions received from Governments in response to a note verbale sent from the Office of the United Nations High Commissioner for Human Rights on behalf of the Secretary-General requesting information on the implementation of resolution 70/147.

4. In its resolution 32/14, entitled "Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements", which was adopted by the Human Rights Council on 1 July 2016, the Council requested the United Nations High Commissioner for Human Rights to submit to the Council before its thirty-third session a report on the promotion and protection of the human rights of migrants in the context of large movements, in consultation with States and other relevant stakeholders, including regional organizations, civil society organizations and national human rights institutions, and to transmit the report to the General Assembly at its seventy-first session.

II. Summary of information received from Governments with regard to the implementation of General Assembly resolution 70/147

5. As at 4 July 2016, replies concerning the implementation of General Assembly resolution 70/147 had been received from Mexico and Romania. Summaries of the responses are provided below. The full texts of the responses are available on the website on migration and human rights of the Office of the United Nations High Commissioner for Human Rights.[1]

Mexico

6. The Government indicated that the protection of the human rights of migrants, regardless of their immigration status, must be guaranteed throughout the migration

[1] The full texts of submissions are available from www.ohchr.org/EN/Issues/Migration/Pages/ReportGA71.aspx.

cycle (origin, transit, destination and return) and that particular attention should be provided to vulnerable groups, including unaccompanied children, older persons and persons with disabilities.

7. The Government provided an overview of the normative and policy frameworks governing migration-related issues, such as the 2011 Migration Law and the 2014-2018 Special Migration Programme. The Migration Law and its Regulation ensure the protection of the human rights of migrants, decriminalize irregular migration and guarantee access to, inter alia, justice, health care, education and birth registration, regardless of migration status.

8. Through the Special Migration Programme, the various authorities of the Federal Public Administration implement actions contained in the Migration Law that promote, protect and fulfil the human rights of migrants. Other administrative provisions on migration, such as the Guidelines on the Protection of Migrants, aim to protect and assist migrants in full respect for their human rights. The Guidelines provide for the creation of groups for the protection of migrants (Beta Groups), which aim to protect the rights of migrants, regardless of their nationality or migration status, including through search and rescue operations and the provision of legal advice and humanitarian assistance.

9. The Migration Law provides some alternatives to immigration detention, including the option for the person who has been detained by immigration authorities to be delivered into the custody of their diplomatic representatives or an institution that aims to protect the rights of migrants. Unaccompanied migrant children should be channelled to the National and Federal Systems for Integral Family Development for the provision of shelter and appropriate care. The protocol for the protection of unaccompanied migrant children in shelters establishes a mechanism for assessing the best interests of children and adolescents under the principle of informed participation.

10. The Government indicated various initiatives to protect the human rights of returning migrants and to facilitate their social and labour-related reintegration. Some of the programmes include the provision of, inter alia, information, counselling and medical care.

11. To combat discrimination and xenophobia against migrants, the Government has launched a number of campaigns focused on changing perceptions, eradicating stigma and providing information about rights and services.

12. With regard to the issue of smuggling, the Government highlighted various initiatives, including the development of guidelines for a comprehensive approach to the smuggling of migrants and campaigns to provide information on the risks involved in hiring the services of smugglers in efforts to cross international borders.

13. Mexico has also developed several initiatives to facilitate and reduce the cost of remittances.

Romania

14. The Government reported that the Romanian authorities have taken a series of measures to align national legislation with international and regional standards in the area of migration and asylum.

15. The Government provided information regarding the reception conditions of applicants for international protection, including in relation to the right to appeal and access to health care, an adequate standard of living and employment. The Government noted that a person should not be subject to detention for the sole reason of having sought international protection, and that any decision to detain a person should be taken on a case-by-case basis, following an individual assessment, and should be consistent with the principles of necessity and proportionality.

16. The Government provided an overview of the legal provisions to prevent and sanction all forms of discrimination, including Emergency Ordinance No. 194/2002 on the status of foreigners in Romania. The Ordinance provides equal access to employment, equitable working conditions, education, vocational training, social security, health care, housing and freedom of association.

17. The Government noted that Law 263/2010 on the public pension system provides that persons enrolled in the public pension system may receive social security benefits regardless their citizenship or place of stay.

18. In relation to labour inspection, the Government noted that Ordinance No. 25/2014 on the employment of migrant workers in Romania establishes that irregular migrants should be informed in writing, in Romanian and in English, by the General Inspectorate for Immigration or, where appropriate, by the labour inspectors from the labour inspectorates, about the rights they have in relation to recovering remuneration due to them by their employer before the execution of any removal decision. The employer is liable to pay any remaining remuneration, taxes and social security contributions that the employer would have paid if the migrant had been regularly employed and to pay any costs arising from sending the payments due to the country to which the migrants have been returned.

19. The Government reported on its national strategy in the fight against the trafficking in human beings. The protection of victims of trafficking is ensured by the National Agency against Trafficking in Persons. Furthermore, the National Mechanism for Identification and Referral establishes that migrant victims of trafficking shall be entitled without discrimination to the same support and protection measures as Romanian victims. They should be informed in a language they can understand about their right to a maximum of 90 days in which to recover and to access specialized support services, including accommodation in special centres, and about the provision of psychological, medical and social assistance. The Government reported that since 2015, new tools have been established to identify vulnerable persons, including victims of trafficking.

III. Conclusion

20. The submissions received highlight legal and policy frameworks on the protection and promotion of the human rights of migrants.